

premature in view of the patentability of Claim 10 as now presented and they are deemed by applicant to be allowable herein as combinations defining the substance of Claim 10 with further limitations, and thus are presented for allowance upon reconsideration of the Examiner.

Retained claims 11, 12, 14 and 15 dependent upon the amended Claim 10 are amended as a matter of form for consistent relationship to the antecedent terminology of amended Claim 10.

#### **TRAVERSAL OF THE REJECTIONS UNDER 35 USC 102(b)**

All rejection grounds are now moot in view of the amendments to Claim 10.

The common rejection ground for all three references is that the shaping means is capable of cutting rectangular shaped tread strips. This rejection premise is respectfully traversed as contrary to the provisions of established 35USC102(b) procedure. See MPEP706.02 , *"for anticipation under 35 USC 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present"*.

Furthermore the "intended use" rejection basis is not 35 USC 102(b) anticipation found in the references, but rather seem to be hindsight observations of the Examiner requiring modification of the references to process flexible rectangular shaped tire tread strips with a treaded surface rather than the disclosed non-flexible lumber and tin sheet products disclosed therein.

Thus the Examiner has not made out a prima-facie case of anticipation by showing how any or all of the references cited directly or inherently teach all the claimed subject matter as required for 35 USC 102(b) anticipation.. The conclusory statement of the Examiner that the shaping means is capable of cutting rectangular shaped tread strips is not supported by the disclosures of the references. And further the Examiner errs in failing to give structural weight to the preamble phrase which constitutes structure expressed in means (apparatus) claim format.

However this traversal is now moot in view of the presentation of Amended Claim 10 limiting the apparatus structure in more explicitly defined structural terms, as the Examiner suggests, and as necessary to overcome newly stated rejection grounds.

Accordingly allowance of Amended Claims 10 and 12 now presented as suggested by the Examiner more explicitly limit the structural format of the cutting apparatus, thereby to fully overcome the issue of intended use. Accordingly allowance of Claims 10 and 12 is respectfully solicited.

**Fritz, et al. 3,89,269**

This reference discloses movable sets of vertical bandsaws for first cutting logs into boards and then edging the boards. Thus the processed logs are not cut by applicant's counter rotating transit cutter wheels 17, 18 which are rotationally carried on the conveyor rolls, as shown for example in applicant's Fig. 3. Accordingly the disclosure of this reference cannot anticipate the amended Claim 10 which now structurally defines the rotating cutter wheels carried by the rotating transit rollers.

**Busch 3,710,836**

This reference has grasping means (180, 68) for the work product different from applicant's claimed two rotating rollers biased together upon which the rotating cutting blades for trimming the tire tread strip edges are mounted..

**Schoendelen 1,578,854**

The Examiner has isolated the Schoendelen shaping means and removed it from the overall waste remover slitter combination in asserting that this sub-combination is capable of cutting rectangular shaped tread strips. This reference however cannot anticipate applicant's claimed invention since Schoendelen does not *teach every aspect of the claimed invention* as required for anticipation under 35 USC 102(b).

Clearly Schoendelen fails to teach or imply that the apparatus is also capable of processing the claimed tire tread work object or to provide a narrower rectangular shaped output strip between the now structurally defined in amended Claim 10 .

It is only applicant that provides a system for cutting and shaping flexible tire tread strips with opposing tread and inner casing surfaces cut from salvaged tire carcasses. Schoendelen's tin plate work object has similar surfacess on opposite sides and thus does not address the problem of positively feeding the tire tread through a cutter station. Note that Schoendelen's feeding means necessitates upwardly inclined conveyor belt 29, which is omitted in applicant's system because the tire tread strip is directly fed manually into the revolving feed rollers with attached rotating cutter blades. Accordingly this reference does not anticipate applicant's claimed combination as a whole.

**SUMMARY AND PETITION FOR ALLOWANCE**

Having presented the amended Claim 10 to more positively claim the structure of the cutting apparatus as the Examiner suggests, Claims 10 and 12 are now allowably presented. Accordingly allowance of Claims 10 and 12 is respectfully solicited.

Applicant's position is that the withdrawn claims 11, 14, 15 and 18 all dependent upon allowable Claim 10 were prematurely withdrawn before parent Claim 10 was fully processed and are now properly retained as allowable dependent claims further restricting the parent Claim 10.

Accordingly it is respectfully solicited that Claims 11, 14, 15 and 18 be allowed.

The title is changed to more currently reflect the nature of the presently claimed invention.

Respectfully presented, April 28, 2004.



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